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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,421	03/20/2001	David Weiss	2420-0034	9918

22204 7590 07/19/2004

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EXAMINER

MEREC, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/811,421	Applicant(s) WEISS ET AL.	
	Examiner Joseph C. Merek	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 15-30 and 32-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-30 and 32-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/17/04 has been entered.

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "the closure surface extending from a lowest point on the inner wall" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as

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per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15-30 and 32-34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 15, 19, 23, and 29, it has not been adequately disclosed that "at least an inner surface of said outer wall is substantially planar in a region extending from said plurality of cut outs to an outer edge of said circumferential rim". Regarding claim 23, it has not been adequately disclosed that the closure surface extends from a lowest point on the inner wall. The drawings of the instant invention show that 36 extends below the bottom of the closure surface. These are new matter rejection. The remaining claims are included since they stem from rejected claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-30 and 32-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 15, 19, 23, and 29, it has not been adequately disclosed that "at least an inner surface of said outer wall is substantially planar in a region extending from said plurality of cut outs to an outer edge of said circumferential rim". It is not clear what is being claimed. The inner surface of the outer wall has an inwardly extending portion at 40 as seen in Fig. 6. It is not clear how the inner surface of the outer wall is planar since it extends around the circumferential. It is not clear what is being claimed. Regarding claim 23, it has not been adequately disclosed that the closure surface extends from a lowest point on the inner wall. The drawings of the instant invention show that 36 extends below the bottom of the closure surface. It is not clear what is being claimed. The remaining claims are included since they stem from rejected claims.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 15, 16, 19, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Lubric (US 6,604,647). Regarding claims 15 and 19 as they are best understood, see Figs. 4-7, where the claimed structure is shown where 10 and 11 are the openings. See Col. 6, lines 50-61 where both can be open at the same time and 8 which is the access opening. See Specifically Fig. 7, where the outer wall is at lead line 100, the openings are formed in the transition wall on the top and the inner wall is 12. The area that is under the opening is capable of receiving a container and the brim or rim would be visible through the openings 10 and 11. The claim does not positively recite the container. A portion of the inner surface of the outer wall is planar as seen in section in Fig. 7. Regarding claims 16 and 20, see Fig. 4, where the spacing of the cutouts is mutual.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 16, 18-20, 22-26, 28-30, 32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Holdt (US 5,538,154) in view of Bingisser (US 5,103,993). Regarding claim 15, 19, and 29, as they are best understood, Von Holdt does not teach the access opening in the closure surface. Bingisser, as seen in Fig. 4 and Col. 3 lines 19-21, teaches a similar container with an access port 16 in the closure

surface. It would have been obvious to employ the access opening of Bingisser in the closure of Von Holdt to provide access to the container without removing the lid or to provide a pouring opening. See Fig. 11 of Von Holdt where the inner surface of the outer wall is planar from the transition wall to the lowest edge. Regarding claim 23, the reference meets the lowest point limitation as much as applicant is able to make this claim. Figs. 4-6 of the instant invention shows that 36 is the lowest point on the inner wall and it is shown as being lower than the bottom of the closure surface. The lower dashed line across 20 represents the bottom of the closure surface. 36 extends below the bottom of this line. The openings of Von Holdt are in each of the four quadrants and mutually spaced.

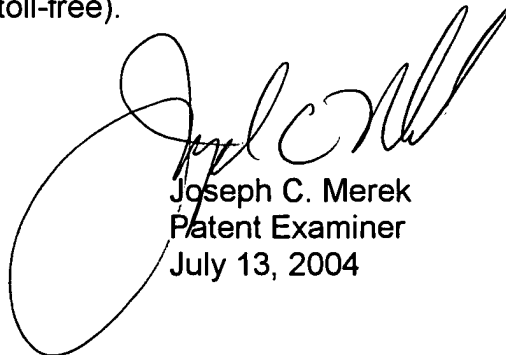
Claims 15, 16, 18-20, 22-26, 28-30, 32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fulton (US 3,858,756) in view of Obey (US 4,428,498). Regarding claims 15, 19, 23, and 29, as they are best understood, Fulton teaches at least one vent opening in the transition wall as seen in Figs. 1, 2, and 8 but does not specifically show more than one vent. The lid as seen in Figs. 1, 2, and 8, has four vent receiving areas. It would have been obvious to employ a vent in each one of these areas to provide the sufficient venting. Fulton does not each access opening. Obey teaches a similar lid with access opening 30. It would have been obvious to employ the access opening of Obey in the lid of Fulton to allow for drinking without removing the lid. As seen in Fig. 4 of Fulton the closure surface extends from the lowest point on the inner wall. The outer wall is substantially planar. The openings are in each of the quadrants and are mutually spaced.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek  
Patent Examiner  
July 13, 2004